

FIRST APPEAL No 1043 of 1986

with

CROSS OBJECTION No 44 of 2003

Date of Decision: 22.12.2004

NEW INDIA ASSURANCE COMPANY LIMITED

Versus

AMBALAL SOMABHAI PATEL

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

Appearance:

1. Firs

MR UDAY R BHATT for Appellant

MR BR SHAH for Appellant

M/S.SURTI & VAKHARIA for Respondent No. 1

NOTICE SERVED for Respondent No. 2-4 2.

CROSS OBJECTION No. 44 of 2003

M/S.SURTI & VAKHARIA for Appellant

..... for Respondent No. 1

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

The award made by the Motor Accident Claims

Tribunal (Main) Ahmedabad (Rural), Narol in MAC Petition

No. 529 of 1982 dated November 21, 1985 has been challenged through this appeal and Cross Objections No.44 of 2003.

Whether reporters of Local Papers may be allowed to see the Judgment?

Briefly stated, the accident took place 25.3.1982 at about 11.35 a.m. when the claimant had gone to meet his friend near Jodhpur Tekra and was going to his new house under construction in Memnagar area. While crossing the highway road from Sarkhej to Gandhinagar, the claimant was coming towards Thalej to move towards Memnagar on his Scooter bearing Registration No. GRA 4516. He was driving it cautiously on the left side of the road. When he came on the cross roads on the road coming from towards Thaltej so as to cross the Sarkhej Gandhinagar Highway, opponent No.1 came from towards Sarkhej with his truck bearing No. GRT 4124 which was being driven at an excessive speed and carelessly, therefor, brought on the wrong side of the road. Noticing this, the claimant slowed down his scooter to stop it but the truck dashed with the right hand side back portion and side portion of the engine and mudguard. The front left hand side portion of the truck dashed with the scooter as a result of which the claimant who was on the scooter was thrown off causing injuries to him on his right leg, right hand and elbow as also on the head. The truck was being driven at an excessive speed, as such, it could stop at a considerable distance dragging the scooter also to some extent. He was shifted to VS Hospital, his complaint was recorded by the police from Navrangpura Police Station. Opponent NO.1 was prosecuted in respect of the said incident for the offences punishable under sections 279, 337 and 338 of the IP Code as also for the offence under section 112 and 113 of the Motor Vehicles Act, 1939. The claimant alleged that the incident took place due to the rash and negligent driving of the truck by the driver, otherwise, it could be avoided. The truck was insured with the New India Assurance Co. The claimant was 49 year old at the time of accident. He was hale and hearty, serving as a teacher in secondary school, getting total emoluments of Rs.1200.00 p.m. Over and above that, he was also supervising the agricultural operation of his agricultural land out of which he used to earn about Rs.1,000.00 p.m. He had to remain in VS Hospital, Ahmedabad as indoor patient from 25.3.83 to 6.5.83 and that he was required to be kept under plaster because of fractures as also was required to undergo operation. It

is also alleged that even on the date of filing of the claim petition, the claimant was under plaster and was required to undergo operation further so as to insert plates inside for the purpose of treatment. Since the date of accident, he was in bed and required to carry out his daily pursuits which is not possible without the help from some one else. He could not move on his legs and is not in a position to sit cross legged or in a squatting position nor to lie down on one side. It was also alleged that he was required to remain on leave from service since the date of the accident till the date of claim petition and suffered loss of leave or the salary in lieu thereof. He is unable to supervise his agricultural operation as a result of which suffered loss of income from the agricultural operation. He has been left with permanent disability on his leg and hand, suffered great pain and suffering during the treatment, attendant to help him and thereby considerable amounts have been spent on various items on treatment and other matters associated with it. In all, compensation of Rs.1,50,000.00 has been claimed.

Opponent No.2 appeared and filed written statement (Exh.15). He claims ownership of the truck in past but on the date of accident, it had been transferred to one Shri Jagdishchandra Jagannathprasad (Opponent NO.3) who has been joined as party in the claim petition by the claimant but did not file his written statement. Subsequently, through application Exh. 21, opponent NO.4 has been added but no appearance was filed despite service, therefore, proceeded ex parte. The New India Assurance Co. Ltd. filed its written statement so also by opponent NO.1. They disputed the claim for compensation and assailed the claim on other grounds like bad/non joinder/misjoinder of parties, claim being exaggerated/excessive, looking to the nature of injury suffered by the claim, his age, income and the liability for payment of compensation. It is also stated that the claimant himself was responsible for the accident.

On the pleadings of the parties, issues are framed at Exh. 32. Evidence recorded. The Claims Tribunal found that the accident was the result of rash and negligent driving of the truck bearing Registration No. GRT 4124 by opponent NO.1, the claimant sustained injuries in this accident. Against the claim of Rs.1,50,000.00, the tribunal awarded Rs.1,32,000.00 carrying interest at the rate of 6% per annum from the date of application. This award is challenged by the appellant and the claimant through cross objections.

Heard the learned counsel for the parties. Perused the record. First question for consideration is whether the truck driver is responsible for causing the accident. Perusal of the evidence clearly shows that the truck driver was driving the truck rashly and negligently. Looking to the place where the accident took place, he should have been careful in driving the vehicle. More so when it is highway, busy road having cross roads. After hitting the scooter, it could stop at a distance dragging the scooter to some extent which demonstrate that it was being driven at a high speed. The driver of the truck was prosecuted. He admitted the charge. He did not appear before the Claim Tribunal to state how the accident took place. Consequently, it is not difficult to conclude that the accident took place due to rash and negligent driving of the truck by the driver. Finding of the claim tribunal on this issue is, therefore, confirmed. Next question pertains to assessment of compensation. Learned counsel for the appellant submits that excessive compensation has been awarded, therefore, same be reduced. Income of the claimant has not been properly assessed.

We have carefully examined this aspect of the matter. There is no force in the submissions made by the learned counsel for the appellant. At the time of accident, the claimant was aged 49 year old. He was hale and hearty, serving as a secondary school teacher earning Rs.1450.00 p.m. besides Rs.1000.00 from agricultural operation. He suffered serious injuries in the accident. He remained as an indoor patient in the hospital for a considerable period where he was subjected to operation. Plates were inserted, plaster was applied. During this period, the claimant must have underwent great pain and suffering, must have incurred expenses on medicine, transport, proper diet etc. Due to this accident, he suffered permanent disability to the extent of 27% as a whole. His body does not remain what it was before the accident. He could not work what he was doing prior to the accident either in service or at home in agriculture where he has to deploy other person, cannot earn to the extent he had been earning prior to the accident.

We think, the tribunal has not properly assessed the compensation. Reasonable and proper attention has not been paid towards the loss of income, particularly from agricultural operation which would require keen, proper and personal attention which the claimant cannot pay now. Further, he is likely to suffer prospective service loss due to disability. Therefore, in the totality of circumstances, lumpsum compensation claimed by

the claimant of Rs.1,50,000.00 deserves to be allowed.

Consequently, appeal is dismissed. Cross Objections are allowed. Claimant is awarded compensation of Rs.1,50,000.00 with interest at the rate of 6% p.a. from the date of the application till the date of realization. Insurance Co. will pay the enhanced compensation within one month. Cost on parties.

[BHAWANI SINGH]
CHIEF JUSTICE

[H.K.RATHOD]
JUDGE

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